

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeenn G. Kelly.

Commonwealth Edison Company

Docket No. ER04-364-000

American Electric Power Service Corporation

On behalf of its operating companies:

Appalachian Power Company

Columbus Southern Power Company

Indiana Michigan Power Company

Kentucky Power Company

Kingsport Power Company

Ohio Power Company, and

Wheeling Power Company

ORDER REJECTING FILING AND PROVIDING GUIDANCE

(Issued March 18, 2004)

1. This order addresses the hold harmless proposal filed jointly on December 31, 2003, by Commonwealth Edison Company (ComEd)¹ and American Electric Power Service Corporation (AEP)² (ComEd-AEP Proposal). ComEd and AEP propose to hold utilities in Wisconsin and Michigan (Wisconsin and Michigan utilities or companies) harmless from the financial impacts of loop flows and congestion caused by ComEd and AEP electing to join PJM Interconnection, L.L.C. (PJM) as their Regional Transmission Organization (RTO), an election that geographically separates the Wisconsin and Michigan companies from the rest of their RTO, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). For the reasons discussed below, we will reject

¹ ComEd's parent company is Exelon Corporation (Exelon).

² AEP is acting on behalf of certain operating companies within the American Electric Power System: Appalachian Power Company, Indiana Michigan Power Company, Columbus Southern Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

the ComEd-AEP Proposal for failing to substantially comply with the requirements of the hold harmless condition established in the Commission's prior orders. We will also provide further guidance regarding the filing of an appropriate hold harmless mechanism and the parameters of the hold harmless requirement. We expect that, based upon such guidance, a timely filing may be made to support the effective date for integration of ComEd into PJM. This order benefits customers because it protects the Wisconsin and Michigan utilities' ability to function within Midwest ISO.

Background

2. The origin of this instant proceeding is the Commission's order of December 20, 2001 (2001 Order).³ There, the Commission determined that the proposed Alliance RTO, which ComEd and AEP, among others, had proposed to join, lacked sufficient regional scope or configuration to qualify as a stand-alone RTO under the requirements of Order No. 2000.⁴ The Commission therefore denied the proposed organization RTO status. In view of merger commitments that required many of the Alliance Companies to join an RTO, the Commission directed the individual utilities to file statements of their plans to join an RTO.⁵

3. In its July 31, 2002 Order, the Commission conditionally accepted ComEd's and AEP's choices of PJM as their RTO.⁶ However, the Commission agreed with protests that ComEd's and AEP's choices of PJM create a void at the center of Midwest ISO that will isolate Wisconsin and Michigan from the rest of Midwest ISO. It agreed also that

³ Alliance Companies, et al., 97 FERC ¶ 61,327 (2001).

⁴ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092. aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

⁵ 97 FERC at 62,531. See also Alliance Companies, et al., 99 FERC ¶ 61,105 at 61,450 (2002).

⁶ Alliance Companies., 100 FERC ¶ 61,137 (2002) (July 31, 2002 Order), order on clarification (February 26, 2003 Order), 102 FERC ¶ 61,214, order on reh'g and clarification, 103 FERC ¶ 61,274 (June 4, 2003 Order), order denying reh'g and granting clarification, 105 FERC ¶ 61,215 (2003) (November 17, 2003 Order), appeal docketed sub nom., American Electric Power Service Corp. v. FERC, No. 03-1223 (D.C. Cir. Aug. 1, 2003).

ComEd's and AEP's choices create a seam at the southern interface of the already constrained Wisconsin Upper Michigan System (WUMS), which presents significant obstacles to relieving the WUMS bottleneck and impedes management of loop flows and congestion. The Commission therefore directed AEP, ComEd, Midwest ISO, and PJM to propose a solution that will effectively hold harmless the Wisconsin and Michigan companies from any loop flows or congestion resulting from the proposed configuration.⁷ The Commission further directed that this solution be part of an overall joint operational plan, to be filed by Midwest ISO and PJM, under which both organizations will manage any reliability or operational issues concerning their seams.⁸

4. Additionally, because of the potential operational and financial impact from the RTO selections by ComEd, AEP, and the other utilities, the Commission found it imperative that PJM and Midwest ISO analyze the operational and financial impact on market participants of adding new members to their respective organizations. It directed the two RTOs to analyze changes in loop flows and congestion (Financial Transmission Rights (FTRs) and North-American Electric Reliability Council (NERC) Transmission Loading Relief (TLR) events) and to post the expected financial and operational impacts, in addition to all underlying studies, prior to adding the new members.⁹

5. On January 23, 2003, the settlement judge assigned to resolve certain aspects of the July 31, 2002 Order inquired as to the Commission's meaning regarding the hold harmless directives. In its February 26, 2003 Order, the Commission made three clarifications. The Commission clarified that the Wisconsin and Michigan companies should be held harmless from any adverse operational and financial impacts related to loop flow and congestion resulting from ComEd's and AEP's choosing to join PJM. It said that such financial impacts may include changes in congestion uplift, locational prices, or changes in levels and/or frequency of TLR procedures, and any other significant commercial impacts that can be reasonably identified and quantified.¹⁰ The Commission clarified that these adverse operational and financial impacts on the Wisconsin and Michigan companies should be compared to what would have existed had

⁷ The July 31, 2002 Order also imposed this hold harmless obligation on Illinois Power Company (Illinois Power), a former participant of the proposed Alliance RTO that had also proposed to join PJM. However, Illinois Power has taken no further action to implement its proposal to join PJM, and did not join in the ComEd-AEP Proposal.

⁸ 100 FERC ¶61,137 at P 53.

⁹ 100 FERC ¶ 61,137 at P 54.

¹⁰ 102 FERC ¶ 61,214 at P 7.

ComEd and AEP joined Midwest ISO, thus internalizing loop flows within one RTO.¹¹ Finally, the Commission clarified that, in effectuating the hold harmless condition, any operational and financial benefits to utilities in Wisconsin and Michigan related to loop flow and congestion resulting from the choices of AEP and ComEd to join PJM (e.g., from loop flows imposed by utilities in Wisconsin and Michigan on PJM) should be netted against any corresponding operational and financial benefits in order to determine the harm from which utilities in Wisconsin and Michigan must be protected.¹²

6. In its June 4, 2003 Order, the Commission denied rehearing of the requirement that the Wisconsin and Michigan companies be held harmless from loop flows or congestion resulting from the proposed RTO configuration. The Commission observed that one of the goals of RTO formation is to internalize and efficiently manage congestion and loop flows. The Commission held that, in order to ensure the reasonableness of the proposed RTO configuration, the Wisconsin and Michigan companies must be held harmless from congestion or loop flows resulting from the creation of this inter-RTO seam at the critically constrained WUMS interface during the interim period prior to commencement of the common market, at which time congestion and loop flows will be effectively internalized.¹³ The Commission clarified that an adequate hold harmless solution must be in place at the commencement of transmission service over the transmission systems of any of the New PJM Companies¹⁴ under the PJM open access transmission tariff (OATT or tariff), or integration of any of these systems into the PJM market.¹⁵

¹¹ 102 FERC ¶ 61,214 at P 10.

¹² 102 FERC ¶ 61,214 at P 14.

¹³ 103 FERC ¶ 61,274 at P 43. In its July 31, 2002 Order, the Commission required Midwest ISO and PJM to form a functional common market across the two organizations. 100 FERC ¶ 61,137 at P 40.

¹⁴ The New PJM Companies at that time consisted of AEP, ComEd, Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company (Dayton P&L). See 103 FERC ¶ 61,274 at P 6. In the ComEd-AEP Proposal, the two utilities refer to themselves as the New PJM Companies. When used in the instant order, the term New PJM Companies refers to those described in the June 4, 2003 Order.

¹⁵ 103 FERC ¶ 61,274 at n.37.

7. The Commission found also that ComEd and AEP (and other companies) had not substantiated their claim that loop flows and congestion will remain the same regardless of which RTO they choose to join. The Commission said that even if loop flows and congestion were to remain the same, the financial and operational impacts associated with such loop flows and congestion may not be the same under the proposed configuration as compared to a configuration where loop flows were internalized within one RTO.¹⁶

8. Additionally, the Commission stated its expectation that Midwest ISO and PJM would be instrumental in analyzing the impacts associated with the proposed and alternative configurations that will form the basis of a hold harmless solution, and also that such solution will be an integral part of the coordination agreements between Midwest ISO and PJM. The Commission denied requests for clarification that sought authorization for unilateral proposals of hold harmless solutions. It directed ComEd and AEP to work with Midwest ISO and PJM to develop and jointly propose a solution.¹⁷

9. Lastly, the June 4, 2003 Order clarified the standard against which the Wisconsin and Michigan companies should be held harmless, and the meaning of financial impacts by citing the clarifications in the February 26, 2003 Order. The Commission clarified further that the Wisconsin and Michigan companies should be held harmless from adverse operational and financial impacts related to loop flow and congestion resulting from the choices of ComEd and AEP to join PJM during the interim period prior to commencement of the common market, at which time congestion and loop flows will be effectively internalized. It observed that cost responsibility associated with implementation of the hold harmless conditions would be addressed in the context of the filings implementing the hold harmless condition.¹⁸

10. In its November 17, 2003 Order addressing a request for rehearing of the June 4, 2003 Order, the Commission clarified that the end date for the Wisconsin and Michigan hold harmless condition is not the date on which PJM and Midwest ISO simply declare a common market to be operative, regardless of the attributes of that common market. It further clarified that the hold harmless requirement will continue in effect until the effective internalization of congestion and loop flows is accomplished. Midwest ISO and

¹⁶ 103 FERC ¶ 61,274 at P 44.

¹⁷ 103 FERC ¶ 61,274 at P 46

¹⁸ 103 FERC ¶ 61,274 at P 47.

PJM would have to make a filing that demonstrates fulfillment of the Commission's conditions before the hold harmless condition is terminated.¹⁹

11. Subsequently, on November 25, 2003, the Commission preliminarily found that it could exercise its authority under the Public Utility Regulatory Policies Act of 1978 (PURPA)²⁰ to require AEP to fulfill its voluntary commitment to join an RTO, namely PJM, by October 1, 2004, over the objections of the States of Kentucky and Virginia.²¹

12. On December 31, 2003, four related filings were made so as to permit ComEd to join PJM on May 1, 2004, on a stand-alone basis before AEP joins PJM, among them the ComEd-AEP Proposal, the instant proceeding. In Docket No. ER04-521-000 (formerly, Docket No. ER03-262-014), PJM filed proposed revisions to its tariff and to its Amended and Restated Operating Agreement (PJM Operating Agreement). In Docket No. ER04-367-000, ComEd and PJM filed revisions to PJM's tariff concerning transmission and ancillary service rates to take effect May 1, 2004, when ComEd is scheduled to join PJM. In Docket No. ER04-375-000, Midwest ISO and PJM filed a proposed Joint Operating Agreement (JOA), a phased plan that will enhance the RTOs' combined operational reliability, resolve hold harmless and market monitoring issues, and ultimately permit the RTOs to administer a joint and common market.²²

¹⁹ 105 FERC ¶ 61,215 at P 8.

²⁰ See 16 U.S.C. § 824a-1 (2000).

²¹ New PJM Companies, 105 FERC ¶ 61,251 at P 107 (2003) (November 25, 2003 Order). The question of whether the Commission can authorize AEP to join an RTO over the objection of certain state agencies, pursuant to the Commission's authority under Section 205(a) of the Public Utility Regulatory Policies Act of 1978(PURPA), 16 U.S.C. § 824a-1(a) (2000), is currently being litigated before the Commission in Docket No. ER03-262-009. On March 12, 2003, the Presiding Judge issued an Initial Decision finding that AEP should be exempted from Virginia and Kentucky laws to the extent required to consummate its timely integration into PJM. 106 FERC ¶ 63,029 at P 311 (2004).

²² The JOA includes implementation of a joint Midwest ISO—PJM report, "Managing Congestion To Address Seams; A Proposal for Congestion Management Coordination; Submitted by PJM-ISO and the Midwest ISO; Version 4.0, August 4, 2003" (Seams White Paper).

Notice and Responsive Filings

13. Notice of the December 31, 2003 filing of the ComEd-AEP Proposal was published in the Federal Register, 69 Fed. Reg. 2586, 2588 (January 16, 2004), with comments, protests, and interventions due on or before January 21, 2004. In response, the entities described in Appendix A filed notices or motions to intervene in response.

14. Entities filing protests are: EME Companies (Edison); Michigan and Wisconsin Hold-Harmless Utilities (WM Utilities); International Transmission Company (International Transmission) (a WM Utilities participant); and Virginia State Corporation Commission (Virginia Commission) (collectively, Protestors). Edison's filing included a motion that the Commission consolidate this proceeding with Docket Nos. ER04-521-000, ER04-367-000, and ER04-375-000. WM Utilities' filing proposed resolution of the hold harmless issues by adoption of its draft settlement agreement (WM Utilities Proposal).

15. Entities filing comments are: Coalition of Retail Energy Suppliers ((Retail Coalition) and the PJM Transmission Owners Agreement Administrative Committee (PJM Owners Committee) (collectively, Commentors). The latter did not intervene in the proceeding.

16. In response to the protests filed by International Transmission and WM Utilities, ComEd and AEP jointly filed on February 5, 2004, and ComEd separately filed on February 9, 2004, answers that oppose the WM Utilities Proposal.²³ On February 12, 2004, Edison filed in this proceeding an answer to the February 5, 2004 filing by Exelon, on behalf of its subsidiary ComEd, in the related proceeding, Docket No. ER04-521-000. On February 18 and 19, 2004, respectively, WM Utilities and International Transmission filed answers to ComEd and AEP's February 5, 2004 filing.

²³ Several entities filed comments on the hold harmless issue, especially the WM Hold Harmless Proposal, not in this proceeding, but in the related Docket No. ER04-375-000 proceeding. On February 5, 2004, Midwest ISO and PJM jointly filed in that proceeding an answer to various entities' comments. Filing comments, on February 10, 2004, were Michigan Commission, MidAmerica, and PJM, and also the Midwest ISO Transmission Owners, who intervened only in the Docket No. ER04-375-000 proceeding. Wisconsin Public Service Corporation and Upper Peninsula Power Company (together, Wisconsin Operating Companies), who intervened only in the Docket No. ER04-375-000 proceeding, filed a February 12, 2004 answer to the above February 5, 2004 joint answer of Midwest ISO and PJM.

Discussion

A. Procedural Matters

17. The notices of intervention of the state commissions and the timely, unopposed motions to intervene serve to make the entities listed in Appendix A parties to this proceeding. See Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003). Given the early stage of this proceeding and the absence of undue delay or prejudice, we find good cause to grant the untimely, unopposed interventions.

18. Rule 214(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 214(a)(2) (2003), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept ComEd and AEP's answer, and WM Utilities' and International Transmission's responses to ComEd and AEP's answer because these filings provide information that aids us in our decision-making process. However, Edison's February 12, 2004 filing is not germane to this proceeding, and we will not accept it.

19. We will deny Edison's motion that we consolidate the instant proceedings with Dockets Nos. ER04-521-000, ER04-367-000, and ER04-375-000. Although related, the December 31, 2003 filings in those proceedings seek to accomplish different purposes. We will address those proceedings separately in orders issued concurrently with this order.

B. The ComEd and AEP Proposal

20. The ComEd-AEP Proposal was filed as a proposed service agreement under the PJM tariff,²⁴ pursuant to Section 205 of the Federal Power Act (FPA),²⁵ and in conjunction with Midwest ISO's and PJM's filing of the JOA, in Docket No. ER04-375-000.

²⁴ ComEd and AEP filed their proposal originally as proposed Schedule 13 to the PJM tariff. PJM Owners Committee pointed out that only PJM or the PJM Transmission Owners may file a new schedule to the PJM tariff, but that the filing could be made as a service agreement. In their joint answer, ComEd and AEP acquiesced in the re-designation, stating that the change to a service agreement could be made in a compliance filing.

²⁵ 16 U.S.C. § 824d (2000).

21. ComEd and AEP contend that there will be little, if any, difference in loop flows and congestion on the Wisconsin and Michigan systems as a result of ComEd and AEP joining PJM rather than Midwest ISO. According to ComEd and AEP, after the Commission eliminates the regional through and out rates under Midwest ISO's and PJM's tariffs for transactions between the two RTOs,²⁶ there will be little difference in the transactions over AEP's and ComEd's systems, compared to what would have occurred had ComEd and AEP joined Midwest ISO. They claim that, were they in Midwest ISO, Midwest ISO would be required, under its tariff, to accept requests for transmission service over the ComEd and AEP systems as long as those requests did not cause violations of reliability criteria. In addition, they explain, the JOA provides an unprecedented level of coordination, including information sharing, coordination of outages, available flowgate capacity determinations, and planning and protocols for each RTO to respect flowgate limitations on the other RTO's system. This coordination among the RTOs, ComEd and AEP maintain, will ensure that the only transactions that will be allowed will be those that would have been allowed, regardless of ComEd's and AEP's RTO choices. Also, the flows that ComEd and AEP transactions would impose on Wisconsin and Michigan systems would still occur had ComEd and AEP joined Midwest ISO. The only difference, they state, is that the flows would be labeled "loop flows" because they come from transactions whose contract paths are external to Midwest ISO.

22. ComEd and AEP maintain that the only reason that flows would be different as a result of their joining PJM would be failure of the RTOs to coordinate operations. However, they state, the JOA ensures coordination. During Phase 1, when PJM operates markets on the ComEd and AEP systems but Midwest ISO does not operate markets within its area, the coordinated congestion management procedures in the JOA provide that each RTO will be responsible for removing its share of excessive flows on constrained flowgates of the other RTO. This should eliminate any increase in levels or frequency of NERC TLR events caused by ComEd and AEP joining PJM. During Phase 2, when both PJM and Midwest ISO are operating markets on their respective sides of the seam between them, the JOA provides for each RTO to coordinate its market dispatch with the objective of achieving consistent locational marginal prices at the nodes between them. With this level of coordination, ComEd and AEP maintain, there should be no difference in electricity flows and, therefore, no difference in costs that can be reasonably identified and quantified.

23. ComEd and AEP contend further that the JOA's coordination provisions will leave Wisconsin and Michigan utilities better off, in Phase 1, prior to Midwest ISO's operation

²⁶ See Midwest Independent Transmission System Operator, Inc., et al., 104 FERC ¶ 61,105, order on reh'g, 105 FERC ¶ 61,212, order granting clarification, 105 FERC ¶ 61,288 (2003), order extending effective date, 106 FERC ¶ 61,106 (2004).

of markets, than if ComEd and AEP had joined Midwest ISO. PJM will redispatch transactions on its system to relieve constraints on the Midwest ISO system, transactions that would not have been subject to redispatch or curtailment if ComEd and AEP were part of Midwest ISO. ComEd and PJM explain that if ComEd and AEP were in Midwest ISO, NERC TLR procedures would apply to transactions on the ComEd and AEP systems. They continue that, under NERC TLR procedures, transactions with less than a five percent impact on a constrained flowgate would not be subject to curtailment. In contrast, under Phase 1, PJM will redispatch its market for all flows on the constrained flowgate, and will do so whether or not any of these flows have a distribution factor of five percent or greater on the constrained flowgate. In addition, ComEd and AEP argue, PJM redispatch will provide more timely relief on Midwest ISO flowgates than the thirty minutes or longer required to curtail transactions under NERC TLR procedures. ComEd and AEP conclude therefore that, under the JOA, not only will Wisconsin and Michigan utilities be held harmless from increased frequency and levels of TLRs, but they will actually be better off.

24. In addition, ComEd and AEP state that the JOA addresses concerns about the partial islanding of Wisconsin and Michigan due to limited Midwest ISO contract path capacity between Wisconsin and Michigan and the rest of Midwest ISO. According to ComEd and AEP, the JOA resolves this issue by providing that the RTOs will share their combined contract path capacity (*i.e.*, the combined capacity of both RTOs will be available to customers of each RTO). As a result, transactions into and from Wisconsin and Michigan will have the same contract path capacity available to them under the Midwest ISO tariff as if ComEd and AEP had joined Midwest ISO.

25. ComEd and AEP state that the JOA will obviate most, if not all, financial impacts of loop flows and congestion caused by their joining PJM. ComEd and AEP anticipate that the only financial impact that the JOA will not obviate will be uncompensated losses that transactions over the ComEd and AEP systems will cause on the Wisconsin and Michigan companies' systems. ComEd and AEP acknowledge that, were they part of Midwest ISO, under the flow-based loss compensation methodology in Attachment M to the Midwest ISO tariff, the Wisconsin and Michigan companies would receive compensation for losses caused by ComEd and AEP transactions that flow on the Wisconsin and Michigan systems. ComEd and AEP add that, similarly, they would receive compensation for losses caused by the Wisconsin and Michigan companies' transactions that flow on the ComEd and AEP systems. Therefore, ComEd and AEP propose to compensate the Wisconsin and Michigan companies for the aggregate net financial impacts on them that are associated with this difference in loss compensation, based on out-of-pocket costs. The compensation would commence when PJM begins to provide transmission service over ComEd's and AEP's facilities under the PJM tariff, and would end when PJM and Midwest ISO implement a joint loss methodology or the Commission determines that effective internalization of losses has been accomplished. ComEd and AEP propose to net such impacts over the entire hold harmless period.

26. ComEd and AEP request that their proposal become effective for each one of them on the date that it transfers functional control of its transmission facilities to PJM, and becomes integrated into the PJM markets. They state that for ComEd, that date is expected to occur May 1, 2004.

Protests

27. Protesters state that the ComEd-AEP Proposal is procedurally defective. Among other things, Protestors argue that: (1) the Commission explicitly required that any filing under Section 205 of the FPA of a hold harmless rate schedule was to be provided by PJM and Midwest ISO jointly, not by ComEd and AEP acting unilaterally;²⁷ and (2) ComEd's and AEP's filing violates Section 205 because it constitutes a proposal by a customer as to what it will pay to receive jurisdictional service, which is not addressed by Section 205. Rather, Section 205 is a mechanism whereby public utilities provide notice and secure regulatory approval of the rates they propose to charge.

28. Regardless of these procedural defects, Protestors argue that the ComEd-AEP Proposal fails to substantively comply with the Commission's prior orders on the hold harmless condition by failing to address a myriad of adverse impacts on the Wisconsin and Michigan companies, including compensation for additional loop flows and congestion that they will experience as a result of changes in the patterns of transactions over the ComEd and AEP systems. Specifically, the ComEd-AEP Proposal fails to provide compensation for financial impacts associated with: (1) changes in congestion uplift payments; (2) changes in locational marginal prices; (3) changes in levels or frequency of TLR procedures that could curtail or adversely affect the Wisconsin and Michigan companies' ability to serve their native load customers; and (4) any other significant commercial impacts that are not known but will likely arise after AEP and ComEd are integrated into PJM.

29. Protestors challenge ComEd's and AEP's position that there will be no change in electricity flows resulting from ComEd and AEP joining PJM and that the incidence of congestion and the level and frequency of TLRs will not increase as a result. According to Protestors, ComEd's choice to join PJM instead of Midwest ISO means that the combined generation resources of ComEd and its affiliate PECO Energy Co. (PECO)²⁸ will be subject to central economic dispatch by PJM, which will change the way in which these resources are dispatched to serve ComEd's and PECO's combined loads. This

²⁷ See WM Utilities' Protest at 5, citing July 31, 2002 Order, 100 FERC ¶ 61,137 at P 53, and June 4, 2003 Order, 103 FERC ¶ 61,274 at P 46.

²⁸ Like ComEd, PECO's parent company is Exelon.

change in dispatch will change the flows on the Midwest ISO system, and may result in increased incidences of congestion on the Midwest ISO system.²⁹

30. With regard to an appropriate baseline against which to measure changes in loop flow and congestion associated with the choices of ComEd and AEP to join PJM, WM Utilities state that, at a conceptual level, assessing the impacts on Wisconsin and Michigan companies as if ComEd and AEP had joined Midwest ISO poses practical difficulties. WM Utilities state that, due to different scheduling protocols in Midwest ISO and PJM, and the absence of electronic tagging for transactions internal to PJM, it would be extremely difficult to take actual PJM market behavior and apply those actions to the existing protocols used by Midwest ISO. In addition, WM Utilities state that, during the period that the hold harmless condition is in effect, Midwest ISO's congestion protocols will change to a market approach. This would require trying to calculate what would have happened under two distinct sets of circumstances: the period prior to Midwest ISO operating markets (Phase 1 of the JOA); and the period after Midwest ISO markets become operational (Phase 2 of the JOA). They state that the complexity expands further due to the fact that ComEd and AEP plan to join PJM at different times.

31. For the above reasons, WM Utilities propose an alternative baseline set of congestion and loop flow impacts on Wisconsin and Michigan entities against which to measure the congestion and loop flow due to actual transactions after ComEd and AEP join PJM. WM Utilities propose, as a baseline, the average hourly loop flows over the Wisconsin and Michigan systems due to transactions on the ComEd, AEP, and PJM systems, measured at each external tie line, during the historical period consisting of calendar years 2001-2003. During the period when the hold harmless condition is in effect, the WM Utilities Proposal would measure actual loop flows over the Wisconsin and Michigan systems due to transactions on the PJM system at each external tie. Incremental loop flows over each tie line would be measured by subtracting the historical baseline average hourly loop flow from the actual hourly loop flow. Those hourly incremental loop flows (positive or negative) will be accumulated, by tie line, for all the hours in each month.³⁰ WM Utilities propose that ComEd and AEP then compensate the Wisconsin and Michigan utilities for these incremental loop flows based on: (1) the license plate zonal transmission rate of the applicable transmission owner, expressed in kWh form; and (2) the applicable zonal loss factor in Attachment M of the Midwest ISO

²⁹ See WM Utilities' Protest at 19; International Transmission Protest, Exhibit ITC-1 at 15.

³⁰ WM Utilities state that their proposal would measure such historical flows based on the methodology in the Seams White Paper, which PJM and Midwest ISO have incorporated into the JOA by reference. See JOA at section 2.3.6 and Appendix A.

tariff, multiplied by the average marginal monthly production cost for the affected zone. There would be no netting between individual flowgates or Wisconsin and Michigan Utilities.³¹

RTOs' Comments

32. Midwest ISO and PJM commented on the hold harmless issue in the Docket No. ER04-375-000 proceeding. There, they state that the JOA directly addresses and solves operational and reliability impacts of loop flows and congestion resulting from AEP's and ComEd's choices to join PJM, and the financial impacts of generation redispatch, but that they were unable to resolve all equity issues to the satisfaction of Midwest ISO stakeholders. However, they offer their services for administrative, billing, and settlement support. While acknowledging the Commission's preference that the JOA include a proposed solution to the hold harmless issue, the RTOs explain that they found it impossible to impose complete solutions on parties who were unable to resolve the issues in direct settlement negotiations.³²

Answers

33. ComEd and AEP argue that WM Utilities ignore the fact that the ComEd-AEP Proposal complements the JOA, and that the JOA resolves all operational and most adverse financial impacts associated with loop flows and congestion across the PJM-Midwest ISO seam. According to ComEd and AEP, the JOA allows the two RTOs to manage loop flows and congestion in a manner equivalent to what would occur if there were a single operator. Regarding suggestions that ComEd and PECO will engage in additional transactions due to their membership in PJM, ComEd and AEP reply that ComEd and PECO already coordinate their operations across a 500 MW bi-directional path over the AEP system, and that it is incorrect to assume that those transactions would not be allowed to continue if ComEd and AEP joined Midwest ISO.

34. ComEd and AEP contend that WM Utilities' proposal to impose a transmission service charge for loop flows goes beyond any legitimate hold harmless requirement. According to ComEd and AEP, had they joined Midwest ISO, the Wisconsin and Michigan utilities would not have received such compensation for loop flows, because,

³¹ Virginia Commission's Protest was not substantive. It only reserved the right to supplement the filing in the future, which Virginia Commission has not done. Edison's Protest discusses issues pertinent to the Docket No. ER04-375-000 proceeding.

³² Midwest ISO's and PJM's December 31, 2003 filing in Docket No. ER04-375-000, Transmittal Letter at 24-25 & n.12.

under the Midwest ISO tariff, Midwest ISO members do not pay for the parallel flows that they cause on one another's systems. Thus, the WM Utilities Proposal would put the Wisconsin and Michigan utilities in a far better position than they are in today.

35. ComEd and AEP object also to WM Utilities proposing historical flows as a baseline against which to measure harm. They state that the February 26, 2003 Order made perfectly clear that the starting point for measuring harm is what would have happened had ComEd and AEP joined Midwest ISO. They state that, if WM Utilities believed that there were practical difficulties in following the February 26, 2003 Order, they should have sought rehearing on the issue in that proceeding. Having failed to do so, they should not now be allowed to collaterally attack that order. ComEd and AEP add that it is simply not true that there are practical difficulties involved in following the Commission's directive.

36. Finally, ComEd and AEP state that, despite the goal of expediting PJM expansion, the Commission cannot be expected to dispose of opinions that have been raised on the basis of the pleadings. They request that the Commission not delay expansion of PJM until a final determination is reached on an appropriate hold harmless mechanism. They state that allowing the ComEd-AEP Proposal to go into effect while the Commission reviews the justness and reasonableness of the procedure is consistent with the FPA. Further, their proposal will preserve the rights of the parties, since, under their proposal, the question of what compensation is due the Wisconsin and Michigan utilities will be determined at the end of the hold harmless period. According to ComEd and AEP, this provides plenty of time to adjust the accounting methodology according to the Commission's final determination without holding up integration into PJM.

37. In their February 12, 2004 filing in Docket No. ER04-375-000, Wisconsin Operating Companies state that the RTOs have chosen to stand on the sidelines rather than participate in the resolution of the hold harmless issue. Wisconsin Operating Companies maintain that the RTOs are in a position to provide valuable modeling data, perform system analysis of transactions related to ComEd's integration into PJM, analyze potential impacts on the flowgates important to the WM Utilities and their customers, and provide other input that would help in developing a means to measure the economic effects of ComEd's and AEP's choosing to join PJM instead of Midwest ISO.

38. Midwest ISO and PJM respond, in Docket No. ER04-375-000, to Wisconsin Operating Companies' and other entities' criticisms that the JOA does not resolve all hold harmless issues. The RTOs point out that they lack authority to resolve all issues, particularly the financial issues, and can only act to persuade their respective stakeholders to accept compromise. They state that the remaining issues are ripe for Commission action or for settlement by the parties. The RTOs state that the implementation of the

JOA should not be delayed because it does not resolve all the hold harmless issues, and point out that Phase 1 will not begin until a hold harmless resolution is placed into effect.³³

Commission Determination

39. After careful consideration of the ComEd-AEP Proposal, we have concluded that we must reject it as currently drafted. It does not comply substantially with the substantive and procedural conditions of a hold harmless proposal as described and clarified in the Commission's prior orders.³⁴ Because we are mindful of the need to resolve hold harmless issues to permit commencement of Phase 1 of the JOA and ComEd's integration into PJM, we have considered the option of accepting the proposal, subject to refund, and setting for hearing the question of just and reasonable compensation due the Wisconsin and Michigan utilities. We have rejected this option because allowing the proposal, as drafted, to take effect subject to further proceedings would not sufficiently protect Wisconsin and Michigan utilities if the compensation ultimately found to be due them were greater than the compensation that the ComEd-AEP Proposal had provided.

40. Our prior orders on the hold harmless issue have stated clearly that, during the period prior to the commencement of a joint and common market between Midwest ISO and PJM (Phase 1 of the JOA), Wisconsin and Michigan utilities are to be held harmless from adverse impacts with respect to loop flow and congestion due to the choices of certain companies, including ComEd and AEP, to join PJM. These orders have also been clear that: (1) a hold harmless mechanism must be filed jointly with Midwest ISO and PJM and such a solution will be an integral part of coordination agreements between Midwest ISO and PJM; (2) an adequate hold harmless solution must be in place at the commencement of transmission service over the transmission systems of any of the New PJM Companies under the PJM tariff or integration of any of those systems into the PJM market; and (3) the baseline for comparison should be what would have occurred had those companies joined Midwest ISO.

41. ComEd and AEP have filed their proposal to complement the JOA, to compensate for those adverse financial effects, associated with loop flow and congestion due to their joining PJM, that are not otherwise mitigated by the RTOs' operational coordination as established in the JOA. As discussed further below, we find that the ComEd-AEP

³³ Midwest ISO's and PJM's February 5, 2004 Answer in Docket No. ER04-375-000 at 8-10.

³⁴ See P 3-10, supra.

Proposal has not been shown to adequately hold the Wisconsin and Michigan utilities harmless from the adverse impacts associated with congestion and loop flow resulting from ComEd's and AEP's RTO choices.

42. Based on the record established in this proceeding, we find that issues of fact have been raised that would be most appropriately addressed through a trial-type evidentiary hearing. The purpose of this hearing would be to determine what if any additional adverse impacts on Wisconsin and Michigan utilities, other than compensation for the difference in loss methodologies, would result from ComEd's and AEP's RTO choices, consistent with the parameters for the hold harmless requirement established in our prior orders and below in this order.

43. ComEd and AEP ask that we place their proposal into effect subject to refund while such further proceedings take place to establish a just and reasonable hold harmless mechanism. However, we find that doing so would not ensure that the Wisconsin and Michigan utilities are adequately protected once ComEd or AEP is integrated into the PJM market, as the June 4, 2003 Order requires. The hold harmless mechanism would establish the rate that ComEd and AEP would pay Wisconsin and Michigan utilities to compensate them for impacts on the Wisconsin and Michigan systems. Putting the proposed hold harmless mechanism into effect subject to refund, while further proceedings take place to investigate the reasonableness of the proposal, would not provide adequate protection to Wisconsin and Michigan customers in the event that the Commission subsequently found that that rate is too low. In order to ensure that Wisconsin and Michigan utilities are adequately protected once ComEd or AEP is integrated into the PJM market, the Commission must have a mechanism to place into effect that will ensure adequate compensation to Wisconsin and Michigan entities from the commencement of ComEd's or AEP's integration into the PJM market.

44. Accordingly, we will reject ComEd's and AEP's filing as failing to substantially comply with the substantive and procedural requirements of the hold harmless condition established in our prior orders. However, while we reject the proposal, in the remainder of this order, we will address issues raised by parties in this proceeding and offer guidance on an appropriate hold harmless mechanism for a timely filing by PJM, ComEd and AEP, pursuant to Section 205 of the FPA.

45. With respect to ComEd's and AEP's desire that their integration into PJM not be delayed while proceedings take place to establish a just and reasonable hold harmless mechanism, we clarify that, were PJM, ComEd, and AEP to propose a service agreement that adopts the ComEd-AEP Proposal,³⁵ subject to the outcome of further proceedings,

³⁵ As noted above, the filing should take the form of a service agreement, under the PJM tariff, related to the affected parties, ComEd and AEP.

we believe that it would be reasonable to allow the proposed service agreement to take effect while those further proceedings take place. Such a proposal would need to contain an explicit contractual mechanism to ensure that ComEd and AEP provide appropriate compensation to Wisconsin and Michigan utilities for any adverse impacts during the entire period that the hold harmless condition is in effect, starting with the integration of ComEd into PJM, including a provision that permits the compensation to be increased, based on the outcome of the hearing. In this way, Wisconsin and Michigan utilities would be adequately protected, and expansion of PJM would not be delayed due to implementation of the hold harmless condition. We expect such a filing to be made in a manner that does not upset the effective date for ComEd's integration into PJM.

46. We find that ComEd's and AEP's proposal to compensate Wisconsin and Michigan utilities for those financial impacts associated with the difference in real power loss methodologies under the Midwest ISO and PJM tariffs is a reasonable starting point for complying with the hold harmless condition.³⁶ However, ComEd and AEP have not supplied the analysis required to demonstrate that their proposal holds Wisconsin and Michigan utilities harmless from all adverse impacts associated with loop flow or congestion due to ComEd and AEP joining PJM. While ComEd and AEP maintain that energy flows and congestion will be unaffected by their joining PJM instead of Midwest ISO, as discussed below, they do not provide the type of detailed analysis required to establish the resultant impacts on Wisconsin and Michigan entities.

47. We agree with ComEd and AEP that much of the difference in transaction patterns, and thus loop flows and congestion, due to the location of the inter-RTO seam would likely be mitigated by elimination of the through and out rates under the RTO tariffs for transactions between the RTOs, and the coordination provided in the proposed JOA. With respect to the latter, we believe that the proposed JOA makes significant progress in addressing economic issues, not to mention reliability issues, associated with the inter-RTO seam. Most significantly, during the period prior to Midwest ISO's operation of markets, the JOA provides mechanisms for PJM market transactions to participate in the NERC TLR process. This addresses concerns expressed by numerous parties in the proceedings leading up to the July 31, 2002 Order; transactions between ComEd and AEP, and the existing PJM footprint that are currently tagged and subject to curtailment through the NERC TLR procedures for their impacts off the contract path (i.e., loop flows impacts), would no longer be tagged and subject to curtailment once the PJM market expands.

48. However, without more thorough analysis of the proposed and alternate configurations, we cannot determine whether transactions and flows will remain

³⁶ We address issues associated with appropriate netting of benefits below.

significantly unchanged due to ComEd's and AEP's choices to join PJM instead of Midwest ISO. Depending on whether ComEd and AEP joined PJM or Midwest ISO, different tariffs with different terms and conditions of service would apply to those systems prior to the commencement of a joint and common market. This difference could affect transaction patterns, and curtailment priorities of transactions, which could affect the costs incurred by Wisconsin and Michigan entities for redispatch, curtailments, and congestion.

49. As discussed above, the JOA provides defined flowgate rights and coordinated congestion management to mitigate the loss of transactions subject to curtailment as a result of PJM market expansion prior to commencement of Midwest ISO's market operation. However, it is not clear that the flowgate rights and redispatch obligations will match the firm reservations and curtailment priorities for transactions that would have taken place if service over the ComEd and AEP systems were provided under the Midwest ISO tariff. For instance, under the JOA, the firm flowgate rights will be based on firm uses as of a historic "freeze date," updated for changes in designated network resources under the proposed RTO configuration, and not on a model of the transaction patterns that would have taken place if ComEd and AEP had joined Midwest ISO.

50. We recognize that, as ComEd and AEP point out, the JOA also provides for PJM to redispatch to eliminate loadings due to certain transactions that would not be subject to curtailment under NERC TLR procedures under the Midwest ISO tariff (i.e., interchange transactions with distribution factors of less than five percent, and intra-control area generation to load transactions that contribute to constraints on flowgates in other control areas). However, without a thorough analysis of all the factors that affect flows over the Wisconsin and Michigan systems, we cannot be certain that, under the JOA, transaction patterns, including loop flows and congestion on the Wisconsin and Michigan systems, will remain substantially unchanged by ComEd and AEP choosing to join PJM.

51. Thus, we find that ComEd and AEP have not demonstrated that their proposal holds Wisconsin and Michigan utilities harmless from reasonably identifiable and quantifiable adverse impacts, associated with loop flow and congestion, that are due to ComEd and AEP joining PJM. However, we also reject WM Utilities' proposal to use historical flows as a baseline against which to measure changes in loop flows. WM Utilities' measurement would include changes in flows caused by elimination of through and out rates. This is inconsistent with the purpose of the hold harmless condition, which is to protect Wisconsin and Michigan from adverse impacts related to loop flow and congestion due to the location of the seam resulting from ComEd's and AEP's RTO choices. Elimination of the through and out rates equates to eliminating a seam, rather than mitigating the effects of a seam. Moreover, while WM Utilities maintain that it is impractical to model market behavior that would have occurred had ComEd and AEP joined Midwest ISO, ComEd and AEP do not share that view.

52. In addition, we reject WM Utilities' proposal to impose a transmission service charge on loop flows. The purpose of the hold harmless condition is to protect Wisconsin and Michigan utilities from the financial impacts associated with loop flows and congestion created by ComEd's and AEP's RTO choices, essentially making Wisconsin and Michigan utilities whole for those impacts, not to provide financial compensation that is separate and unrelated to such impacts, as WM Utilities' proposal would do. As the Commission has previously held, the compensation due Wisconsin and Michigan utilities under the hold harmless condition must be related to an actual incremental financial impact due to ComEd's and AEP's RTO choices "that can be reasonably identified and quantified."³⁷

53. However, we do agree with MW Utilities that, had ComEd and AEP joined Midwest ISO, Wisconsin and Michigan utilities would have received a portion of the revenues for point-to-point transmission service for certain transactions, due to the flow-based distribution of such revenues in Appendix C of the Midwest ISO Agreement,³⁸ but will not receive those revenues due to ComEd's and AEP's decisions to join PJM. The Commission's elimination of through and out rates under the RTO tariffs for transactions between the two RTOs will eliminate this revenue loss to a certain extent, but not completely (e.g., for existing transactions for which the through and out rates were not eliminated, and for transactions sinking outside of the combined RTOs). The Commission's statement in the February 26, 2003 Order that such revenue impacts are beyond the scope of the hold harmless condition was incorrect, and we take this opportunity to reverse that finding. These potential revenue losses should be taken into account in the hold harmless mechanism.

C. Netting of Benefits

54. WM Utilities disagree with ComEd and AEP over the scope of the Commission's requirement, in the February 26, 2003 Order, that beneficial impacts be netted against any adverse financial impacts, and discuss which elements they propose should be netted against adverse impacts. WM Utilities believe that the correct implementation of this netting requirement would be to net any beneficial impacts accruing to the utilities in Wisconsin and Michigan associated with loop flows and congestion caused by ComEd and AEP on the Wisconsin and Michigan systems, but to not net beneficial impacts accruing to Wisconsin and Michigan utilities associated with loop flows and congestion caused by the Wisconsin and Michigan companies on the PJM system.

³⁷ See February 26, 2003 Order at P 7.

³⁸ Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc.

55. WM Utilities acknowledge that the February 26, 2003 Order specifically mentions benefits from loop flows imposed by Wisconsin and Michigan companies on PJM as benefits that should be netted in the calculation of adverse financial harm to Wisconsin and Michigan companies due to the choices of ComEd and AEP to join PJM. However, they believe that Commission statements in the June 4, 2003 Order support their view on this issue. Specifically, they cite the Commission's refusal to require certain former Alliance RTO participants who decided to join Midwest ISO to hold ComEd and AEP harmless from adverse impacts associated with the participants' decision to join Midwest ISO. There, WM Utilities state, the Commission reasoned that the imposition of the hold harmless condition on ComEd and AEP was not unduly discriminatory, even though no such condition was imposed on the former Alliance RTO participants who joined Midwest ISO to hold ComEd and AEP harmless from impacts caused by those utilities' choices to join Midwest ISO, because the choices of these other utilities to join Midwest ISO were consistent with the scope and configuration requirements of Order No. 2000, while ComEd's and AEP's choices to join PJM were not.

56. In their answer, ComEd and PJM object to WM Utilities' position regarding appropriate netting of benefits. They state that the February 26, 2003 Order is clear that any operational or financial benefits to utilities in Wisconsin and Michigan due to loop flows or congestion, including benefits associated with flows on the PJM system, should be considered in calculating the net harm. They state that the language from the June 4, 2003 Order cited by WM Utilities is irrelevant to the issue at hand. ComEd and AEP state that, in contrast to that rehearing request, here ComEd and AEP are not asking to be held harmless by the other former Alliance RTO participants; rather, they are asking that any benefits to Wisconsin and Michigan utilities be netted against adverse effects. There, WM Utilities state, the Commission held that the imposition of the hold harmless condition on ComEd and AEP was not unduly discriminatory, even though no such condition was imposed on the former Alliance RTO participants who joined Midwest ISO, to hold ComEd and AEP harmless from impacts caused by those utilities' choices to join Midwest ISO, because the choices of these other utilities to join Midwest ISO were consistent with the scope and configuration requirements of Order No. 2000, while ComEd and AEP's choices to join PJM were not.

Commission Determination

57. The February 26, 2003 Order stated:

[I]n effectuating the hold harmless condition, any operational and financial benefits to utilities in Wisconsin and Michigan related to loop flow and congestion resulting from the choices of [ComEd and AEP] to join PJM (e.g., from loop flows imposed by utilities in Wisconsin and Michigan on PJM) should be netted against any adverse operational and financial impact on utilities in Wisconsin and Michigan related to loop flow or congestion

resulting from the choices of [ComEd and AEP] to join PJM, in order to determine the harm from which utilities in Wisconsin and Michigan must be protected.³⁹

58. This order is clear that benefits to Wisconsin and Michigan utilities associated with impacts on the PJM system must be netted in any calculation of harm. We disagree with WM Utilities that the parenthetical phrase is in any way inconsistent with or mitigated by the discussion in the June 4, 2003 Order regarding New PJM Companies' request to be held harmless from adverse impacts that they experience due to the decisions of certain former Alliance RTO participants to join Midwest ISO. There, the matter was the threshold issue of whether the choices of those other former Alliance RTO participants to join Midwest ISO were inconsistent with the scope and configuration requirements of Order No. 2000 such that New PJM Companies should be held harmless from those choices. That threshold issue of whether a hold harmless condition was warranted, given those former Alliance RTO participants' choices to join Midwest ISO, is entirely separate from the issue here. Rather, the issue here is determination of the appropriate calculation of the impacts from which Wisconsin and Michigan utilities should be held harmless once it has been decided that ComEd and AEP's RTO choices warrant the hold harmless condition.

D. Financial Transmission Rights

59. WM Utilities state that the ComEd-AEP Proposal is silent on the ability of the Wisconsin and Michigan utilities to receive FTRs on the PJM system. They state that, had ComEd and AEP joined Midwest ISO, the Wisconsin and Michigan Utilities would receive FTRs on ComEd's and AEP's systems consistent with the Midwest ISO's protocols for FTR distribution, and that ComEd's and AEP's integration into PJM could expose Wisconsin and Michigan utilities to increased congestion charges to which they would not have been exposed if ComEd and AEP had joined Midwest ISO. Therefore, WM Utilities propose that they be granted sufficient FTRs for their existing uses of the ComEd and AEP systems to ensure that their existing firm service over the ComEd and AEP systems is seamlessly maintained and fully hedged and that existing rollover rights are fully maintained.

60. ComEd and AEP argue that WM Utilities' request for FTRs sufficient to ensure that their existing transmission service over the ComEd and AEP systems is seamlessly maintained and fully hedged ignores the Commission's directive about an appropriate baseline to measure harm. They maintain that this is another attempt by WM Utilities to put themselves in a better position than they would have been in had ComEd and AEP joined Midwest ISO. They state that under PJM's normal practices, Wisconsin and

³⁹ February 26, 2003 Order at P 14.

Michigan utilities will receive FTRs for their firm uses of the PJM system. However, while the FTR allocation is designed to hedge exposure to congestion costs, no one is guaranteed a perfect hedge. ComEd and AEP state that, while they understand that Midwest ISO and its stakeholders continue to debate FTR allocation methodologies, whatever methodology is ultimately adopted must face the test that all FTRs must be simultaneously feasible. ComEd and AEP state that, in any event, WM Utilities will have an opportunity to raise their specific concerns with their FTR allotment when PJM files its initial allocation of FTRs in the expanded PJM prior to the expansion.

61. PJM also objects to provisions in WM Utilities' proposal that would require PJM to modify its tariff in a discriminatory fashion to guarantee that Wisconsin and Michigan utilities get a special allotment of FTRs that fully hedge their transactions. PJM states that these provisions go beyond the negotiated JOA, appear outside the scope of the hold harmless condition, and would result in unnecessary and inappropriate favoritism toward some market participants that could be affected by such FTR allocations.

62. MidAmerica states that it does not object to the Wisconsin and Michigan utilities receiving an allocation of FTRs for existing firm transmission usage, as long as all firm transmission usage receives such an allocation. MidAmerica is concerned about situations where an allocation of FTRs to all existing firm transmission usage is not simultaneously feasible. In such a situation, MidAmerica submits, WM Utilities' proposal would appear to place Wisconsin and Michigan utilities at the head of the line, and other parties would apparently be left with a pro-rated share of FTRs, while the Wisconsin and Michigan utilities would be ensured that their service is fully hedged.

Commission Determination

63. The hold harmless condition arose because the seam resulting from the choices of certain of the former Alliance RTO participants to join PJM: (1) left Wisconsin and Michigan susceptible to impacts associated with loop flows and congestion due to lack of a uniform methodology for managing electricity flows and congestion across systems with significant electrical interactivity; and (2) left Wisconsin and Michigan partially islanded from the rest of Midwest ISO. The first aspect is limited to impacts associated with congestion due to loop flows, and does not include provisions for transmission service on the PJM system. The latter aspect, regarding the partial islanding concerns, addresses the weak Midwest ISO contract path capacity between Wisconsin and Michigan and the rest of Midwest ISO; the Wisconsin and Michigan utilities would be dependent on transmission service under the PJM tariff to reach the rest of Midwest ISO prior to the commencement of the joint and common market under the proposed JOA. This issue is addressed by the sharing of the RTOs' combined contract path capacity in the JOA, as discussed above, which will allow Wisconsin and Michigan utilities to access

the RTOs' combined capability under the Midwest ISO tariff.⁴⁰ Any further provisions regarding service over the ComEd and AEP systems under the PJM tariff, such as WM Utilities' proposal regarding FTRs, are beyond the requirements of the hold harmless condition.

E. Deliverability of Operating Reserves

64. WM Utilities propose that PJM should develop a procedure to ensure that the delivery of operating reserves to Wisconsin and Michigan, and the cost of such deliveries, is not adversely affected by ComEd and AEP choosing to join PJM.

65. ComEd and AEP argue that deliverability of operating reserves into Wisconsin and Michigan, and the cost of that delivery, is not a hold harmless issue. They state that reserve sharing is purely a voluntary matter being handled within the Mid-Atlantic Interconnected Network (MAIN) and the East Central Area Reliability Council (ECAR), and is not related to congestion or loop flows. They state that, had ComEd and AEP joined Midwest ISO, there would have been no assurance of delivery of operating reserves to Wisconsin and Michigan because such delivery, whether within Midwest ISO or not, continues to rely on the availability of after-the-fact, non-firm transmission service at the time of the reserve sharing event. They state that, as is done today, Midwest ISO would plan for delivery of reserve sharing through use of a Transmission Reliability Margin (TRM) in its calculation of available transmission capacity, and that the JOA has addressed this specific issue by providing for maintenance of TRM or use of redispatch for delivery of operating reserves for a reserve sharing event.

66. PJM also objects to provisions in WM Utilities' proposal that would require PJM to develop a procedure to ensure that deliverability of operating reserves to Wisconsin and Michigan, and the cost of such delivery, is not adversely affected. PJM states that these provisions go beyond the carefully negotiated JOA, appear outside the scope of the hold harmless condition, and would result in unnecessary and inappropriate favoritism toward some market participants that could be affected by such transmission priorities.

Commission Determination

67. As explained above in our discussion on FTRs, the hold harmless condition is limited to impacts associated with congestion due to loop flows on the Wisconsin and Michigan systems and the weak connectivity between Wisconsin and Michigan and the rest of Midwest ISO; it does not otherwise address provisions for transmission service

⁴⁰ See P 24, *infra*.

under the PJM tariff. Therefore, WM Utilities' proposal regarding the delivery of operating reserves over the ComEd and AEP systems under the PJM tariff is beyond the requirements of the hold harmless condition. However, as ComEd and AEP note, the JOA addresses coordination between the RTOs to meet obligations to make transmission capacity available for reserve sharing.

F. NN-6 Priority for Non-Firm Service into Wisconsin and Michigan

68. WM Utilities propose that any transactions with non-firm transmission service sinking in Michigan or Wisconsin that is reserved day-ahead and is sourced from the ComEd or AEP systems, should have a curtailment priority of NN-6, the priority associated with network integration transmission service from sources not designated as network resources.

69. ComEd and AEP answer that WM Utilities' proposal for these transactions to be given a curtailment priority of NN-6 is not only not an issue involving loop flow or congestion, but is ultimately a decision within the sole purview of Midwest ISO and PJM.

70. Also, PJM objects to provisions in WM Utilities' proposal that would require PJM to provide non-firm transmission service to serve load in Wisconsin and Michigan with priority level of NN-6. PJM states that these provisions go beyond the carefully negotiated JOA, appear outside the scope of the hold harmless condition, and would result in unnecessary and inappropriate favoritism toward some market participants that could be affected by such transmission priorities.

Commission Determination

71. As explained above in our discussion on FTRs, the hold harmless condition is limited to impacts associated with congestion due to loop flows on the Wisconsin and Michigan systems, and the weak connectivity between Wisconsin and Michigan and the rest of Midwest ISO. It does not otherwise include provisions for transmission service under the PJM tariff. Therefore, WM Utilities' proposal regarding priority of non-firm service over the ComEd and AEP systems under the PJM tariff is beyond the requirements of the hold harmless condition.

G. Long-Term Planning

72. WM Utilities state that one concern of particular interest to Wisconsin and Michigan utilities is the management and reduction of transmission congestion because WUMS is one of the most congested areas in the United States. They state that but for ComEd's and AEP's decisions to join PJM instead of Midwest ISO, ComEd's and AEP's systems would be included in Midwest ISO's transmission planning process. They state that, if the JOA is to enable the development of a vibrant, liquid, seamless joint and

common market, it must, at a minimum, provide for regional transmission planning and expansion that includes utilities bordering Midwest ISO. WM Utilities propose that ComEd and AEP submit annual transmission expansion plans to Midwest ISO, including any expansions that PJM directs them to make under its regional expansion plan. MISO would then integrate ComEd's and AEP's expansion plans with the rest of Midwest ISO transmission owners' expansion plans, and direct expansions on the ComEd and AEP systems as needed.

Commission Determination

73. We agree that coordination of RTO planning is of critical importance given the RTO configuration resulting from ComEd's and AEP's decisions to join PJM. We address this issue in Docket No. ER04-375-000.

H. Coordinated Congestion Management

74. WM Utilities propose that, during the period when ComEd is integrated into PJM ahead of AEP, or until Midwest ISO operates markets, PJM and Midwest ISO must practice coordinated congestion management on all of the flowgates identified in the JOA as being subject to inter-RTO impacts, not just those flowgates impacted by generation to load transactions within the ComEd system, as the JOA contemplates.

75. PJM objects to WM Utilities' proposal. It answers that it and Midwest ISO determined that such additional coordination would yield no material operational benefit. PJM acknowledges that, to the extent that coordination of additional flowgates is reasonably required as part of the hold harmless requirement, those specific flowgates will be added to the JOA. PJM maintains that a blind requirement to coordinate at flowgates not yet affected by PJM and Midwest ISO operations is unreasonable.⁴¹

Commission Determination

76. We address this issue in Docket No. ER04-375-000.

I. Costs of Implementing Hold Harmless Condition

77. Finally, WM Utilities propose that ComEd and AEP should be responsible for compensating PJM and Midwest ISO for any costs associated with implementing the hold harmless condition in excess of the costs to implement the JOA.

⁴¹ See PJM's February 10, 2003 filing in Docket No. ER04-375-000 at 3-4.

78. ComEd and AEP state that it is premature to decide this issue until the parameters of the hold harmless condition are decided. They add that they believe that the hold harmless condition is not meant to be some form of punishment, but rather, is a mechanism to avoid certain adverse effects on the Wisconsin and Michigan utilities.

79. MidAmerica requests that it be held harmless from this hold harmless proceeding. Similarly, Midwest ISO Transmission Owners request that no burden be placed on Midwest ISO and, in turn, its customers, from the requirement to hold harmless the WM Utilities.

Commission Determination

80. We agree with ComEd and AEP that it is premature to decide this issue. Consistent with the June 4, 2003 Order, cost responsibility for implementing the hold harmless condition is more appropriately decided once an adequate hold harmless mechanism has been fully established.⁴²

The Commission Orders:

The ComEd-AEP Proposal is hereby rejected for failure to comply with the requirements of the July 31, 2002 Order, the February 26, 2003 Order, and the June 4, 2003 Order, to adequately hold Wisconsin and Michigan utilities harmless from adverse impacts associated ComEd's and AEP's choices to join PJM.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary.

⁴² 103 FERC ¶61,274 at P 47.

Appendix A

The listed parties have filed notices or motions to intervene in Docket No. ER04-364-000. Short-hand references are indicated in parentheses after the name. Late filings are indicated by an asterisk.

Allegheny Companies (Allegheny)

Allegheny Power
Allegheny Energy Supply Company, LLC

Ameren Services Company (Ameren)

Union Electric Company, d/b/a AmerenUE
Central Illinois Public Service Company, d/b/a AmerenCIPS
Central Illinois Light Company, d/b/a AmerenCILCO

Chambersburg, Pennsylvania, Burrough of (Chambersburg)

Coalition of Retail Energy Suppliers (Retail Coalition)

Ameren Energy Marketing Company
Peoples Energy Services Corp.

Constellation NewEnergy, Inc. (NewEnergy) and Constellation Power Source, Inc.
(together, Constellation)

Dominion Resources Inc. (Dominion)

Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C.
(together, Duke)

EME Companies (Edison)

Edison Mission Energy
Edison Mission Marketing & Trading, Inc.
Midwest Generation EME

FirstEnergy Service Company (FirstEnergy)

Illinois Commerce Commission (Illinois Commission)

Illinois Power Company (Illinois Power)

Maryland Office of People's Counsel (Maryland People's Counsel)

Michigan and Wisconsin Hold-Harmless Utilities (WM Utilities)

Alliant Energy Corporate Services*
American Transmission Company, LLC
Association of Businesses Advocating Tariff Equity
Consumers Energy Company
Crosswell Light & Power
Dairyland Power Cooperative
The Detroit Edison Company, LLC
International Transmission Company (International Transmission)
Madison Gas and Electric Company
Michigan Electric Transmission Company, LLC
Michigan South Central Power Agency
Michigan Public Power Agency
Nordic Marketing, LLC
City of Sebawaing, Michigan
Thumb Electric Corporation
Upper Peninsula Power Company
Wabash Valley Power Association
Wisconsin Electric Power Company d/b/a We-Energies
Wisconsin Public Power, Inc.
Wisconsin Public Service Corporation
Wolverine Power Supply Cooperative, Inc.
City of Wyandotte, Michigan

Michigan Public Service Commission (Michigan Commission)

MidAmerican Energy Company (MidAmerican)

Midwest Independent Transmission System Operator, Inc. (Midwest ISO)

Ohio Consumers' Counsel (Ohio Consumers)

PJM Interconnection, L.L.C. (PJM)*

PPL Electric Utilities Corporation and PPL EnergyPlus, LLC (together, PPL)

Reliant Resources, Inc. (Reliant)

Virginia State Corporation Commission (Virginia Commission)

Wisconsin, Public Service Commission of (Wisconsin Commission)